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EXPLANATION OF AGREEMENT PERTAINING TO MOHEGANS AND MASHANTUCKET PEQUOTS EBONUS AND FREE SLOT PLAY PROGRAMS

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You asked for an explanation of the agreements Governor Malloy signed earlier this year with the Mohegans and Mashantucket Pequots pertaining to the casinos' eBonus and Free Slot Play programs. You also want to know if the legislature must approve the agreements.

SUMMARY

Both Foxwoods and Mohegan Sun casinos operate promotional programs providing certain customers with coupons, credits, or both to play slot machines for free, up to the face value of the coupons or credits. Under separate 2009 state-tribal agreements, both the Mohegans and Mashantucket Pequots agreed that whenever the coupons or credits used in any month exceed 5.5% of "gross operating revenue" from slot machines, they will contribute 25% of the excess amount to the state. The 2012 agreements, signed by Governor Malloy, modify the 2009 agreements, raising the threshold triggering the contribution from 5.5% to 11% and reducing the percentage of gross operating revenue on which the contribution is calculated. The agreements therefore potentially reduce state revenue.

The agreements stipulate that they have no precedential value and do not represent amendments or modifications to the revenue-sharing memorandum of understanding (MOU) each tribe has with the state, giving them the exclusive right to operate video slot machines in Connecticut in exchange for a 25% cut of gross operating revenue from the machines. Rather, the parties have agreed to settle the issue that is the subject of a lawsuit, namely, what constitutes gross operating revenue under the MOU as it relates to the Free Slot Play program (in the case of Foxwoods) and eBonus program (in the case of the Mohegans).

As was the case with the 2009 agreements, the 2012 agreements have no legal effect unless approved by the legislature. The latter agreements must be approved under CGS § [3-6c](#), which outlines procedures and deadlines for legislative approval of compacts or amendments. If the legislature does not approve the agreements within the deadlines, they are considered approved.

ISSUE BACKGROUND

To resolve a dispute about the legality of offering slot machine gaming at the casinos, the Mohegans and Mashantucket Pequots entered into separate agreements with the state giving them the exclusive right to operate slot machines in exchange for monthly contributions of 25% of their gross operating revenue from slot machines to the state (see OLR Report [2008-R-0441](#)).

In 2006, the Mashantucket Pequots introduced a Free Play promotional program at Foxwoods, giving certain customers coupons, electronic credits, or both to play slot machines for free up to the face value of the coupons or credit. The state contended, and the tribe disagreed, that, in calculating gross operating revenue under the MOU, the tribe had to include the face value of the coupons or credits customers used.

In December 2006, the state sued the tribe seeking compensatory damages for 25% of the free slot play coupons and credits used on the slots through the date of judgment, plus interest and investment income and other just and equitable relief. The state later amended its complaint to include the alternative theory that if the coupons or credits were not deemed wagers, the tribe was not entitled to deduct the amount of prizes paid out on them when calculating gross operating revenue under the MOU.

In 2007, the state and tribe entered an agreement, with the tribe agreeing to deposit into an escrow account, on an ongoing basis, sums representing 25% of the face value of free slot play coupons or credits used since the start of the Free Slot Play program to the termination of the escrow agreement.

In 2007, the Mohegans introduced an eBonus program, similar to Foxwoods' Free Play program, and also established an escrow account to hold 25% of the face value of eBonus coupons. The tribe agreed to abide by the terms of any settlement agreement between the state and Mashantucket Pequots regarding the Free Slot Play program.

ISSUE RESOLUTION

In 2009, the state and Mashantucket Pequots settled their lawsuit without either admitting liability. As part of the agreement, the tribe agreed that if the aggregate amount of free play coupons or credits used after July 1, 2009 in any month exceeds 5.5% of gross operating revenue from slot machines, it would contribute to the state 25% of the excess face amount of the coupons or credits.

In 2012, Governor Malloy amended the agreement. Under the amended agreement, if the aggregate amount of free slot play coupons or credits used exceeds 11% of gross operating revenue from slot machines, the tribe will contribute 25% of the excess face amount of free slot play coupons or credits over the 11% threshold. (The Mohegan amendment was signed on April 16. We were unable to establish the date when the Pequot agreement was signed.)

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